

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD K. HOOKS,

CASE NO. 2:23-cv-01000-LK

Petitioner,

ORDER REGARDING HOOKS'
MOTION FOR AN EXPEDITED
HEARING, ETC. AND
STARBUCKS' CROSS-MOTION
FOR EXPEDITED DISCOVERY
ETC.

STARBUCKS CORPORATION.

Respondent.

This matter comes before the Court on Petitioner’s motion “for an order to expedite these proceedings, adjudicate this matter on affidavit and documentary evidence, and for an order governing requests for expedited discovery,” Dkt. No. 19 at 2,¹ and Respondent Starbucks Corporation’s cross motion for expedited discovery and an evidentiary hearing, Dkt. No. 41 at 1. The Court grants both parties’ motions in part and denies them in part.

¹ As in *Lomax v. Starbucks Corporation*, Case No. 1:23-cv-01426, Dkt. No. 17 (D. Colo. June 22, 2023) Petitioner improperly filed a request for an order governing requests for expedited discovery before the issue was ripe because Starbucks had not requested expedited discovery. This tactic forced Starbucks to either choose to have one brief rather than the two it would have had in the normal course had it been the movant, or to file a cross motion, giving Petitioner more briefing on the topic than it would have had in the normal course. Either choice would inure to Petitioner's benefit. Similar gamesmanship in the future will result in the Court striking the submission and/or imposing sanctions.

I. BACKGROUND

Petitioner Ronald K. Hooks, Regional Director of the Nineteenth Region of the National Labor Relations Board (the “Board”), filed this action in July 2023 seeking an injunction against Starbucks under Section 10(j) of the National Labor Relations Act (“NLRA”). Dkt. Nos. 1, 22; 29 U.S.C. § 160(j). The Board contends that Starbucks engaged in unfair labor practices by combining three stores into a new “Heritage District” to quell a nascent union organizing campaign and by discriminating against union supporters in hiring for Heritage District jobs. Dkt. No. 22 at 12–19. The Board has scheduled a hearing before an administrative law judge to begin on December 12, 2023 regarding the alleged unfair labor practices. *Id.* at 12.

The Board filed this motion seeking to have its motion for a preliminary injunction considered without discovery and on the affidavits and exhibits filed in support of that motion. Dkt. No. 19 at 4–5. The affidavits are from current and former Starbucks employees attesting to various facts about their employment, their union support or lack thereof, their beliefs about the company’s knowledge of their union support, and Starbucks’ hiring decisions. Dkt. No. 5-2 (exhibits 12–18). Some employees state that managers questioned them about how they felt about the union, or that other employees told them that they had been subjected to such questioning. *Id.* at 13, 24–25. Some employees indicate whether union supporters were hired. *Id.* at 13 (an employee who openly supported the union was hired at 1st and Pike store while another supporter was not); *id.* at 19 (an employee who openly supported the union was not hired into the Heritage District); *id.* at 64 (same). One employee alleges that a union supporter was not allowed to interview remotely for a Heritage District position, while other employees were allowed to do so. *Id.* at 32–33.

In addition to the affidavits, the Board filed documents from another Board case, 19-RC-297140 (the “representation case”), which arose out of Workers United’s June 6, 2022 petition to

1 represent the hourly baristas and shift supervisors at Starbucks' 1st and Pike store in downtown
 2 Seattle. *See* Dkt. No. 41 at 3. The Board has filed a transcript of the hearing in the representation
 3 case and the parties' exhibits from that hearing. Dkt. No. 63 at 9–11 (listing exhibits); Dkt. Nos.
 4 6-2, 7, 7-1, 8, 8-1, 9, 10 (exhibits 24–27 therein include the transcript from the representation
 5 hearing and the parties' exhibits).² The Board argues that the Court should issue its requested
 6 injunction—without the inevitable delay of discovery—because its exhibits include sufficient
 7 information to meet its burden to demonstrate that an injunction is just and proper. Dkt. No. 19 at
 8 5, 8.

9 Starbucks cross moved for an evidentiary hearing and discovery. Dkt. No. 41 at 1. It seeks
 10 discovery to counter the Board's affidavits, “to test Petitioner's assertion that the employees who
 11 were ‘displaced’ from the legacy 1st & Pike store were likely to have voted for Workers United[,]”
 12 . . . that the alleged unfair labor practice had a ‘chilling’ impact on protected activity under the
 13 NLRA[,]” and “to determine why some of the alleged ‘displaced’ employees did not apply to
 14 Heritage Market.” *Id.* at 6. Starbucks argues that the evidence from the administrative hearing in
 15 the representation case is of limited utility because (1) it involved a different issue, (2) the Board
 16 excluded from that hearing any evidence of Starbucks' motivation in creating the Heritage
 17 District—a key issue in this case—and (3) no evidence was offered regarding any chilling of union
 18 support. *Id.* at 4.

19 It also seeks discovery from the Board in three areas: (1) “the facts, not matters concerning
 20 the Board's deliberative process, surrounding and leading up to the decision by the Board to
 21 authorize the filing of the Petition”; (2) the reasons for “the Board's (a) nearly 14-month delay
 22

23 ² The Board dismissed the representation case because it could not determine whether the petitioned-for bargaining
 24 unit was appropriate for purposes of collective bargaining, as the 1st and Pike store was closed at the time and would
 reopen as part of the merged Heritage Market. Dkt. No. 41 at 3.

1 from the date Starbucks announced the implementation of the Heritage Market to its filing this
 2 Section 10(j) petition, and (b) the 18-month delay from the filing of the first unfair labor practice
 3 charge to the scheduling of the administrative hearing in December 2023”; and (3) the evidentiary
 4 basis for the Board’s requested relief, including “that the Court issue an order rescinding
 5 establishment of the Heritage Market at 1st & University and Pike Place, despite there being no
 6 allegations of union activity at those stores” and for a notice to be posted and read at the impacted
 7 stores. *Id.* at 6–7; *see also id.* at 7 (seeking an “expedited schedule for document requests and
 8 interrogatories to the Board, the deposition of the Regional Director or another agent of the Board,
 9 and document subpoenas to and depositions of the Union, the individuals who provided the
 10 affidavits that Petitioner offers as exhibits with this Petition, and others whom Starbucks learns
 11 may have relevant evidence.”).

12 II. DISCUSSION

13 The Court first describes the applicable legal framework as a backdrop to this dispute. It
 14 then addresses the propriety of discovery.

15 A. The Legal Framework

16 Although the Board “enjoys primary jurisdiction over labor disputes, subject only to
 17 narrow judicial review,” Section 10(j) of the NLRA “permits the NLRB to petition a federal district
 18 court ‘for appropriate temporary relief or restraining order’ pending the Board’s resolution of an
 19 unfair labor practice charge.” *McDermott v. Ampersand Pub., LLC*, 593 F.3d 950, 957 (9th Cir.
 20 2010) (quoting 29 U.S.C. § 160(j)). The purpose of Section 10(j) is to “protect the integrity of the
 21 collective bargaining process and to preserve the NLRB’s remedial power while it processes”
 22 unfair labor practices complaints. *Miller ex rel. NLRB v. Cal. Pac. Med. Ctr.*, 19 F.3d 449, 459–
 23 60 (9th Cir. 1994) (en banc), *abrogated on other grounds by Winter v. Natural Res. Def. Council*,
 24 555 U.S. 7 (2008).

1 Where, as here, the respondent does not concede that it violated the law, the Board bears
 2 the burden of showing that an injunction is “just and proper.” *Id.* at 459. When evaluating requests
 3 under Section 10(j), “district courts consider the traditional equitable criteria used in deciding
 4 whether to grant a preliminary injunction.” *McDermott*, 593 F.3d at 957. Under that familiar rubric,
 5 plaintiffs seeking a preliminary injunction must establish a likelihood of success on the merits, a
 6 likelihood of irreparable harm, that the balance of equities tips in their favor, and that the public
 7 interest favors the issuance of the injunction. *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180,
 8 1184 (9th Cir. 2011); *Winter*, 555 U.S. at 20. The likelihood of success in a Section 10(j)
 9 proceeding “is a function of the probability that the Board will issue an order determining that the
 10 unfair labor practices alleged by the Regional Director occurred and that [the appellate court]
 11 would grant a petition enforcing that order, if such enforcement were sought.” *Frankl ex rel. NLRB*
 12 *v. HTH Corp.*, 650 F.3d 1334, 1355 (9th Cir. 2011).

13 Although the Board argues that discovery is inappropriate in 10(j) proceedings, “the
 14 discovery provisions of the Federal Rules of Civil Procedure apply in 10(j) proceedings, as a suit
 15 of a civil nature.” *Madden v. Milk Wagon Drivers Union Loc.* 753, 229 F. Supp. 490, 492 (N.D.
 16 Ill. 1964) (cleaned up); *Sperandeo v. Milk Drivers & Dairy Emps. Loc. Union No. 537*, 334 F.2d
 17 381, 384 (10th Cir. 1964) (“[W]hile this action was brought by the appellant in his official
 18 government capacity, he is in no different position than any ordinary litigant and is, therefore,
 19 bound by the discovery provisions of the Federal Rules of Civil Procedure in the same respects as
 20 any ordinary litigant.”). Pursuant to Federal Rule of Civil Procedure 26(b)(1), each party is entitled
 21 to discovery of “any nonprivileged matter that is relevant to any party’s claim or defense and
 22 proportional to the needs of the case.” And expedited discovery is permissible upon a showing of

1 “good cause.” *Malibu Media, LLC v. Doe*, 319 F.R.D. 299, 302 (E.D. Cal. 2016).³ “Good cause
 2 may be found where the need for expedited discovery, in consideration of the administration of
 3 justice, outweighs the prejudice to the responding party.” *Semitool, Inc. v. Tokyo Electron Am., Inc.*,
 4 208 F.R.D. 273, 276 (N.D. Cal. 2002); *see also* Fed. R. Civ. P. 26(d), Notes of Advisory
 5 Committee on 1993 Amendment (stating that discovery prior to a Rule 26(f) conference “will be
 6 appropriate in some cases, such as those involving requests for a preliminary injunction”).

7 **B. The Court Allows Limited Discovery**

8 The Board argues that discovery, even if expedited, is not appropriate in a 10(j) case. Dkt.
 9 No. 19 at 6. But courts have allowed the respondent to conduct at least some discovery in 10(j)
 10 cases, including in similar cases involving Starbucks. *See Meter v. Minn. Mining & Mfg. Co.*, 42
 11 F.R.D. 663, 664 (D. Minn. 1967) (granting discovery including depositions on the issues raised in
 12 the Section 10(j) petition); *Poor v. Starbucks Corp.*, No. 1:22-cv-7255, Dkt. No. 20 & Dec. 19,
 13 2022 Minute Entry (E.D.N.Y. Dec. 2022) (allowing discovery including service of subpoenas and
 14 five depositions not to exceed three hours per witness); *Leslie v. Starbucks Corp.*, 1:22-cv-478-
 15 JLS, 2022 WL 7702642, at *1–3 (W.D.N.Y. Sept. 23, 2022) (allowing discovery); *McKinney v.*
 16 *Starbucks Corp.*, No. 2:22-cv-02292, 2022 WL 5434206, at *1 (W.D. Tenn. Aug. 18, 2022)
 17 (stating that the court had ordered expedited discovery); *see also id.* at Dkt. No. 79 at 2 (exhibit
 18 list reflecting deposition transcripts).⁴

19 The Board argues that discovery is unnecessary and should be precluded because its
 20 pleadings, witness affidavits, and documentary evidence are sufficient to carry its “modest
 21

22 ³ Starbucks disputes the applicability of the good cause standard, Dkt. No. 59 at 4, but even if that standard applies, it
 23 has been met as set forth below. And regardless, the parties agree that if discovery is allowed, it should be conducted
 24 expeditiously. Dkt. No. 41 at 1 (moving “for an order establishing an expedited discovery schedule”); Dkt. No. 54 at
 2 (seeking “speedy interim relief”).

⁴ In its reply, Dkt. No. 54 at 7, the Board relies on *Overstreet v. Absolute Healthcare*, where the court limited discovery
 to a single deposition of a discharged employee. No. CV-22-00361-GMS, Dkt. No. 14, (D. Ariz. Apr. 21, 2022). But there,
 unlike in this case, the administrative record was complete and the ALJ had issued a decision. *Id.* at 2–3.

1 burden,” and the Court should give the Board’s position the “benefit of the doubt.” Dkt. No. 19 at
 2 4–5. In support of this argument, the Board cites Second Circuit and Seventh Circuit cases. *Id.* at
 3 4 (citing *Seeler v. The Trading Port, Inc.*, 517 F.2d 33, 36–37 (2d Cir. 1975)); *Squillacote v.*
 4 *Graphic Arts Int’l Union*, 540 F.2d 853, 858–59 (7th Cir. 1976) (“*Graphic Arts II*”). But *Graphic*
 5 *Arts II* was a Section 10(*l*) case, and the Seventh Circuit subsequently “disavow[ed] the language
 6 in earlier cases that equated § 10(j) and § 10(*l*),” emphasizing that “[o]nce the Board seeks
 7 injunctive relief under § 10(j), the only question for the court is whether the Board has
 8 demonstrated that relief is ‘just and proper’ under the approach traditionally applied to equitable
 9 cases filed by public agencies.” *Kinney v. Pioneer Press*, 881 F.2d 485, 493 (7th Cir. 1989); *see also id.* at 488 (“[T]here has been anything but unanimity among the circuits on the question what
 10 it takes for the Director to demonstrate reasonable cause.”). For its part, the Second Circuit has
 11 recognized “a circuit split with respect to the proper standard for granting a § 10(j) petition.”
 12 *Kreisberg v. HealthBridge Mgmt., LLC*, 732 F.3d 131, 141 (2d Cir. 2013). Unlike the Ninth
 13 Circuit, the Second Circuit retains the “reasonable cause” test in its hybrid approach to 10(j)
 14 petitions. *Glasser ex rel. N.L.R.B. v. ADT Sec. Servs., Inc.*, 379 F. App’x 483, 485 n.2 (6th Cir.
 15 2010). Here, the Board is not entitled to an unchallenged “benefit of the doubt” at this stage where
 16 it has not yet held a hearing or issued a decision. Rather, “it is the courts of appeals which are
 17 obliged to afford deferential review to final Board determinations, not the district courts in
 18 response to preliminary requests.” *Miller*, 19 F.3d at 458; *see also United Nurses Ass ’ns of Cal. v.*
 19 *NLRB*, 871 F.3d 767, 777 (9th Cir. 2017) (explaining the appellate court’s standard of review for
 20 Board decisions, including affording “special deference” to the Board’s credibility findings
 21 (cleaned up)). Accordingly, district courts confronted with 10(j) requests still consider the *Winter*
 22 factors and “exercise judgment rather than simply sign[ing] off on Board requests” for injunctions.
 23 *Miller*, 19 F.3d at 458; *see also Hooks v. Nexstar Broad., Inc.*, 54 F.4th 1101, 1114 (9th Cir. 2022)

1 (“The propriety of injunctive relief must be evaluated on a case-by-case basis in accord with
 2 traditional equitable principles and without the aid of presumptions or a ‘thumb on the scale’ in
 3 favor of issuing such relief.”) (cleaned up)

4 As for the nature of Board’s burden in 10(j) proceedings, “the Board can make a threshold
 5 showing of likelihood of success by producing some evidence to support the unfair labor practice
 6 charge, together with an arguable legal theory.” *Miller*, 19 F.3d at 460. But that standard does not
 7 obviate the responding party’s Rule 26 right to conduct discovery regarding the likelihood of
 8 success or the other *Winter* factors.

9 The Board also argues that its motion for a preliminary injunction requires expedited
 10 treatment under the Federal Courts Civil Priorities Act. Dkt. No. 19 at 2; *see also* 28 U.S.C. §
 11 1657(a) (courts “shall expedite the consideration of . . . any action for temporary or preliminary
 12 injunctive relief”). Starbucks does not dispute that the motion deserves prompt consideration, but
 13 seeks expedited discovery before the Court issues a decision. Dkt. No. 41 at 9–19. Indeed, the two
 14 paths are not mutually exclusive: the Court can allow expedited discovery and still consider the
 15 matter promptly after discovery has concluded. Even setting aside the avoidable delays caused by
 16 the Board having to refile its petition several times due to its multiple violations of the Local Civil
 17 Rules and this Court’s Orders, *see* Dkt. Nos. 1, 5, 17, 18, 22, 62, 63, 69, the Board’s assertion that
 18 expedited discovery would problematically delay resolution rings hollow after its other delays,
 19 including scheduling a hearing for nine months after consolidating the complaints and waiting for
 20 over a year to bring this action after Starbucks announced its decision to create the Heritage
 21 District. *See* Dkt. No. 22 at 16 (May 6, 2022 decision to create the Heritage District); Dkt. No. 1
 22 (July 2023 filing of this action); Dkt. No. 22 at 12 (NLRB consolidating the complaints in March
 23 2023 and scheduling the hearing for December 2023); *see also*, e.g., *Cuviello v. City of Vallejo*,
 24 944 F.3d 816, 833 (9th Cir. 2019) (“[A] long delay before seeking a preliminary injunction implies

1 a lack of urgency and irreparable harm” but “such tardiness is not particularly probative in the
 2 context of ongoing, worsening injuries.” (cleaned up)). Although the Board claims that the ongoing
 3 situation “will continue to . . . undermine any remaining support for the Union within the three
 4 downtown Seattle stores comprising the Heritage District (as well as throughout the Seattle area),”
 5 Dkt. No. 19 at 3, it is unlikely that support will degrade appreciably in the brief time it takes to
 6 conduct expedited discovery. Accordingly, allowing limited discovery will not prejudice the Board
 7 or violate the statutory requirement to expedite consideration of motions for preliminary injunctive
 8 relief.

9 Furthermore, Starbucks has demonstrated a need to conduct some discovery. Although it
 10 would be premature for the Court to delve into the propriety of any specific discovery requests
 11 before they have been propounded and before the parties have met and conferred, it suffices to say
 12 that at least some of Starbucks’ requested areas of discovery are reasonable, including depositions
 13 of the individuals who submitted affidavits to allow Starbucks to explore the basis for the
 14 assertions therein. Dkt. No. 5-2; *see, e.g., Overstreet v. Absolute Healthcare*, No. 2:22-CV-22-
 15 00361-GMS, Dkt. No. 14 at 4 (D. Ariz. Apr. 21, 2022) (allowing deposition of discharged
 16 employee); *Drew-King v. Amazon.com Servs., LLC*, 1:22-cv-01479-DG-SJB, Dkt. No. 31 at 11–
 17 12 (E.D.N.Y. March 30, 2022) (allowing depositions of the four affiants).⁵ And although the Board
 18 argues that it has already produced its supporting evidence so “there will be little, if anything, else
 19 it could produce,” Starbucks is not required to take that assertion at face value without discovery.
 20 Dkt. No. 19 at 9. In light of the relevance of at least some of the information sought, “it would be

21 ⁵ As the Board notes, it would be premature for the Court to opine on the appropriate scope of discovery before
 22 Starbucks has provided its discovery requests because the Court must evaluate the breadth of the requests, their
 23 purpose, and the burden of compliance. Dkt. No. 19 at 10. Starbucks agrees that prospective limitations would be
 24 inappropriate because it has not yet served discovery requests or deposition notices and the parties have not yet met
 and conferred regarding the scope of discovery. Dkt. No. 41 at 20; *see also* Fed. R. Civ. P. 26(c), 37(a)(1); LCR 26(c),
 37(a). The parties are reminded that they “must meet and confer to an impasse.” *Brantigan v. Deputy Spine, Inc.*, No.
 C08-0177-RSL, 2008 WL 4279405, at *1 (W.D. Wash. Sept. 12, 2008).

1 against the interests of true justice to foreclose respondent from an opportunity to investigate and
 2 discover evidence in support of its position.” *Madden*, 229 F. Supp. at 493 (cleaned up). That
 3 conclusion is bolstered by the fact that 10(j) injunctions, if granted, are “often of long duration.”
 4 *Id.* at 492–93. And the injunction the Board seeks here is broad, including “reinstatement of the
 5 33 terminated/not-rehired employees and restoration of operations at the three downtown Seattle
 6 stores to their pre-HD status[.]” Dkt. No. 22 at 29.⁶ In light of the potential duration and breadth
 7 of an injunction (if granted), Starbucks is entitled to some discovery. Accordingly, balancing the
 8 need for expedited consideration against Starbucks’ right to conduct discovery and respond to the
 9 petition for a preliminary injunction, the Court finds good cause to allow expedited discovery.

10 C. The Court Defers the Request for an Evidentiary Hearing

11 The Board asks the Court to decide the matter solely on affidavit and documentary
 12 evidence. Dkt. No. 19 at 5. Starbucks requests that the Court order a hearing and take evidence.
 13 Dkt. No. 41 at 19. The Court defers ruling on both requests because an evidentiary hearing may
 14 be unnecessary following discovery if the matter can be decided on the filings. Either party may
 15 file a supplemental brief of up to 4200 words regarding the propriety of an evidentiary hearing
 16 within 14 days of the conclusion of expedited discovery.

17 III. CONCLUSION

18 For all the foregoing reasons, the Court GRANTS IN PART AND DENIES IN PART the
 19 parties’ cross motions. Dkt. Nos. 19, 41. The Court will allow the parties to conduct discovery,
 20 and it will consider this matter on an expedited basis. The Court defers ruling on Starbucks’ request
 21 for an evidentiary hearing and on the Board’s request for the Court to decide the matter solely on
 22 affidavit and documentary evidence. The Court ORDERS the following regarding discovery:

23
 24 ⁶ Starbucks contends that instituting the requested relief would degrade its enhanced customer service experiences in
 the Heritage District and hiring the 33 workers would potentially displace existing workers. Dkt. No. 46 at 4–5.

1 By November 3, 2023, Starbucks shall submit to Petitioner a proposed discovery plan
2 indicating (a) what discovery it seeks and why, (b) a list of proposed deponents and why,
3 (c) proposed time limits, in hours, for each deposition, (d) a proposed schedule for taking
4 depositions, propounding discovery requests, and receiving responses, (d) a statement regarding
5 whether Starbucks seeks to conduct the depositions in person or remotely and if in person, why a
6 remote deposition is insufficient, and (e) a proposal on how to serve any deposition notices and/or
7 subpoenas on current or former employees.

8 By November 10, 2023, Petitioner shall respond to Starbucks' proposed discovery order
9 including proposing any discovery he seeks to conduct.

10 Within five days thereafter, the parties must meet and confer on the proposed discovery
11 plan to an impasse as required by Local Civil Rule 37. If the parties agree on a plan, they must file
12 with the Court with a Notice to that effect and a proposal to submit supplemental briefs regarding
13 the pending motion for a preliminary injunction after discovery has been conducted. If the parties
14 are unable to agree on any portion of the discovery plan, they may submit a joint motion to the
15 Court under Local Civil Rule 37(a)(2) for resolution that addresses both the discovery issues and
16 their proposals for supplemental briefing.

17 Dated this 27th day of October, 2023.

18
19 
20 Lauren King
21 United States District Judge
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